Ex Parte Presentation

VIA ELECTRONIC FILING

Marlene H. Dortch Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554

Re: Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo, LLC for Consent to Assign Licenses and Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Licenses, WT Docket No. 12-4

Dear Ms. Dortch:

Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless, LLC (Applicants) hereby respond to T-Mobile USA, Inc.'s ("T-Mobile's") most recent presentations to Commission staff. T-Mobile offers no new analysis, facts, or reasons that could justify denying the pending applications to assign AWS spectrum in the secondary market. These transactions will help provide the spectrum capacity necessary for Verizon Wireless to meet consumers' growing needs for 4G service. T-Mobile, however, simply repeats claims that the Applicants have rebutted in the past.

In fact, the only "news" here is the odd disconnect between T-Mobile's regulatory arguments and the business presentations of its parent company, Deutsche Telekom AG. Twice in the last two weeks, Deutsche Telekom's Chief Financial Officer has relayed to investors the company's optimistic view of T-Mobile's future in the U.S. market:

- "[W]e will have an LTE offer, which is competitive enough with all the players in the U.S. market" and will be launched next year.²
- "And by the way, at the end of the day for almost every market, we have two times 10 megahertz of LTE. This is giving us a clear path until 2017, 2018,

¹ See Letter from T-Mobile to FCC, WT Docket No. 12-4 (May 15, 2012) ("May 15 T-Mobile Ex Parte"); Letter from T-Mobile to FCC, WT Docket No. 12-4 (May 17, 2012) ("May 17 T-Mobile Ex Parte").

² Transcript of Deutsche Telekom AG's CEO Discusses Q1 2012 Results – Earnings Call (May 10, 2012), *available at* http://seekingalpha.com/article/578731-deutsche-telekom-ag-s-ceo-discusses-q1-2012-results-earnings-call-transcript?part=qanda (remarks of Chief Financial Officer Timotheus Höttges) ("Deutsche Telekom Q1 Earnings Call").

whatever projection you might take with regards to data consumption on a standalone basis."³

- "[T]he Android market is growing nicely here in the U.S. as well. We could tap this potential. We have an empty network. We have fiber links in the backhaul. So therefore, we could really play with this capacity. And we know how huge this uptick, this growth of data is in the U.S. market. So therefore we have a clear challenger strategy as we call it here for the U.S. market."
- "There is no need for us to enter into any kind of deal" through at least 2018.⁵

T-Mobile's regulatory advocacy is so different from its parent's view that one can only conclude it is mis-using the regulatory process solely to impede a competitor's 4G plans or extract concessions. The Commission should promptly approve the proposed license assignments that will provide consumers access to spectrum they need for the innovative devices, applications and services they can use over the 4G LTE network, and reject the pleas for a regulatory handout from a competitor.

T-Mobile's presentation recycles its time-worn arguments about the deal.⁶ Once again, T-Mobile handpicks particular bands it calls "LTE spectrum" to concoct the argument that Verizon Wireless holds, or will hold, excessive amounts of spectrum.⁷ The Applicants have repeatedly explained that there is no such thing as LTE spectrum, and that, contrary to T-Mobile's meritless claim, operators have active plans to rollout LTE services across multiple bands, including the BRS/EBS, PCS, and MSS bands.⁸ Noticeably absent from T-Mobile's presentation is any discussion of the Commission's spectrum screen or related market-specific

³ Transcript of Fireside chat with Timotheus Höttges, Chief Financial Officer, Deutsche Telekom AG, J.P. Morgan Global Technology, Media and Telecom Conference, at 6 (May 15, 2012), *available at* http://www.telekom.com/static/-/127034/2/transcript-webcast-hoettges-si ("Höttges Fireside Chat").

⁴ *Id*.

⁵ *Id*.

⁶ See generally, May 15 T-Mobile Ex Parte, Presentation. T-Mobile's repeated cherry picking of facts without any relevant context is disingenuous. For example, T-Mobile highlights that "[o]nly 9% of Verizon's subscribers are using LTE," yet fails to acknowledge that the network is brand new, is still being deployed, and is subject to the basic realities of upgrade cycles for any established wireless operators' customer base. *Id.*, Presentation at 2-3.

⁷ *Id.*, Presentation at 3. The chart is also pointless because it ignores the number of connections Verizon Wireless serves as well as Verizon Wireless' announced plan to conduct an open sale process for all of its Lower 700 MHz A and B spectrum licenses.

⁸ Joint Opposition to Petitions to Deny and Comments, WT Docket No. 12-4, at 61-63 (filed Mar. 2, 2012) ("Joint Opposition"); *see also* Letter from Verizon Wireless to FCC, WT Docket No. 12-4, at 7-9 (filed May 2, 2012) ("Applicants' May 2 Ex Parte"). Clearwire reiterated just last week its intent to use its BRS/EBS spectrum to deploy a LTE network with the "fattest pipe in the industry, bar none ... with the fastest speeds." Maisie Ramsay, *Clearwire LTE a Competitive Must-Have, says CEO*, Wireless Week (May 16, 2012), *available at* http://www.wirelessweek.com/News/2012/05/Clearwire-LTE-a-Must-Have-says-CEO/. Sprint Nextel will incorporate the PCS band into its LTE network, and DISH Network has stated its intent to use the 2 GHz MSS band for a terrestrial LTE network.

competitive analysis that has always informed FCC transaction review. More broadly, the suggestion that Verizon Wireless somehow has, or would have, an unfair spectrum advantage is undercut by T-Mobile's own parent company. As noted above, Deutsche Telekom executives have publicly assured investors that T-Mobile's current U.S. spectrum holdings provide it sufficient capacity to offer competitive LTE services and that it will do so very soon. To rollout 4G, T-Mobile will rely on "greenfield" AWS spectrum. And, as noted above, T-Mobile's parent has emphasized that in virtually all its markets it has 10x10 MHz of spectrum and an "empty network."

The Commission should take note of the stark contrast between T-Mobile's allegations and Verizon Wireless's substantive showings in this proceeding. T-Mobile's baseless allegation that Verizon Wireless has excess capacity for network expansion¹¹ and its unsupported theoretical modeling to describe warehousing¹² simply cannot undercut Verizon Wireless' voluminous network data filings, which demonstrate the capacity constraints that Verizon Wireless customers will experience as early as next year in many markets absent additional spectrum. Verizon Wireless has provided historic and projected LTE traffic levels at more than 40,000 cell site sectors, and has submitted detailed calculations based on its longstanding Verizon Planning Instrument ("VPI") that it uses in the ordinary course of business. ¹³ In contrast, T-Mobile provides neither evidence nor analysis to counter the Applicants' findings and instead relies on arguments concocted solely for regulatory purposes that contradict its and its parent's prior statements.

With respect to T-Mobile's capacity argument in particular, its parent company's statements again directly contradict its regulatory story. Deutsche Telekom's characterization of T-Mobile's "empty network" suggests that T-Mobile is the one with excess capacity – a situation that it says might extend for six years or more. 15

⁹ Deutsche Telekom Q1 Earnings Call.

¹⁰ Michelle Taylerson, *T-Mobile Expands 4G Network to New Cities*, T-Mobile Issues & Insights Blog (Mar. 13, 2012), *available at* http://blog.t-mobile.com/2012/03/13/t-mobile-expands-4g-network-to-new-cities/.

¹¹ May 15 T-Mobile Ex Parte. Presentation at 3.

¹² May 17 T-Mobile Ex Parte, at 1-3.

¹³ See generally, Joint Opposition, Ex. 2, Supplemental Declaration of William H. Stone (discussing Verizon Wireless's historic traffic, projected traffic needs, and the VPI); Letter from Verizon Wireless to FCC, WT Docket No. 12-4 (filed Apr. 30, 2012) (summarizing and further explaining a presentation to FCC staff on the VPI, and providing maps depicting capacity constraints of all launched LTE markets at year-end 2011 where Verizon Wireless is acquiring AWS spectrum); Letter from Verizon Wireless to FCC, WT Docket No. 12-4 (filed Mar. 30, 2012) (providing additional wireless site data on electronic media); Letter from Verizon Wireless to FCC, WT Docket No. 12-4 (filed Mar. 22, 2012) (responding to FCC information and document requests with voluminous data on electronic media, including detailed data on wireless sites).

¹⁴ Höttges Fireside Chat at 6.

¹⁵ *Id.* at 6, 9.

Similarly, T-Mobile's most recent "efficiency" argument is limited to one PowerPoint slide. That showing apparently is designed to present a pretty visual for regulators and, perhaps, to obscure that its claim rests on outlier assumptions divorced from any widely accepted industry efficiency standard or legitimate means to measure network capacity or efficiency. Hore fundamentally, T-Mobile ignores altogether the number of connections each carrier supports. In its place, it arbitrarily adds weight to the scales, on one hand by weighting customers according to whether they currently have a smartphone (regardless of what the trend is for tomorrow), and on the other by weighting the supposed value of spectrum to give greater weight to 700 MHz spectrum. Every provider's smartphone penetration obviously changes over time and has been increasing for all providers, including Verizon Wireless. Basing efficiency metrics on smartphone penetration is both highly complex and hopelessly static. The Applicants also have repeatedly explained – including by quoting T-Mobile's own words – that all spectrum bands have advantages and disadvantages, and that any attempt to weigh 700 MHz or other spectrum differently is analytically hollow and ultimately uninformative.

Once again, it is difficult to square T-Mobile's heavy reliance in its regulatory advocacy on the asserted higher value of "low band spectrum band holdings" with Deutsche Telekom's dismissal of investing in 700 MHz spectrum as "nothing which ... would be attractive for us." In any event, T-Mobile's arbitrarily re-weighted efficiency calculations are not probative as to how Verizon Wireless will put the spectrum to use or whether this transaction advances the public interest.

Finally, it is more than a little strange that much of T-Mobile's latest presentation is dedicated to an overview of its own network investment strategy, which includes the challenges T-Mobile created for itself by choosing not to invest sufficiently in the U.S. market. Despite its best efforts to make this proceeding about T-Mobile, it simply is not and cannot be under the law. The question before the Commission is straightforward: whether or not the proposed assignments to Verizon Wireless are in the public interest. That answer is yes – Verizon Wireless needs this additional, currently unused spectrum to meet its customers' needs. How T-Mobile could use the AWS spectrum, why it elected not to purchase spectrum on the open market when available, and whether or not T-Mobile would now prefer a different investment strategy are all irrelevant. As has been pointed out by several parties, Congress limited the FCC's review of license assignments under Section 310(d) of the Communications Act to "consideration [of] the buyer proposed in an assignment application, and [the FCC] cannot consider whether some other proposal might comparatively better serve the public interest." Despite its dedicated to a supplication of the proposal might comparatively better serve the public interest.

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¹⁶ May 15 T-Mobile Ex Parte, Presentation at 7. The slide cites only T-Mobile's own expert, Dennis Roberson, and conveniently fails to include T-Mobile's new spectrum from AT&T – which would reduce T-Mobile's claimed efficiency while increasing that of AT&T.

 $^{^{17}}$ Joint Opposition at 55-61, n.194; Applicants' May 2 *Ex Parte* at 7.

¹⁸ See Deutsche Telekom Q1 Earnings Call (remarks of CEO René Obermann).

¹⁹ May 15 T-Mobile Ex Parte, Presentation at 5-6.

²⁰ See, e.g., Citadel Communications Co., Ltd. and Act III Broad. of Buffalo, Inc., Memorandum Opinion and Order, 5 FCC Rcd 3842, 3844 ¶ 16 (1990) (emphasis added).

Notwithstanding T-Mobile's clear understanding of this provision just months ago, ²¹ it has reversed course in this proceeding and wrongly asserts that the Commission can look at what T-Mobile or others would do with the spectrum if they could acquire it.²² T-Mobile's own words best rebut its current claims: "Congress intended for the Commission to consider a transaction 'as though no other person were interested in securing such permit or license."²³

T-Mobile's recycling of rebutted claims here only underscores that parties have now had more than ample opportunity to raise objections to the proposed assignment of AWS licenses. They have been unable to establish any legitimate basis to deny or condition the proposed license assignments. The Commission should complete its review and grant the applications for the benefit of Verizon Wireless's customers.

Respectfully submitted,

/s/

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²¹ Specifically, T-Mobile declared in October 2011 that that "[t]he Commission has specifically rejected precisely th[is] type of inquiry" and under Section 310(d) "cannot 'consider the relative merits of alternative, hypothetical transactions," Letter from Deutsche Telekom and T-Mobile USA, Inc., to FCC, WT Docket No. 11-65, at 2 (Oct. 31, 2011) (quoting Various Subsidiaries and Affiliates of Geotek Communications, Inc. and Wilmington Trust Co., Memorandum Opinion and Order, 15 FCC Rcd 790, 811 ¶ 48 (WTB 2000)) ("October 31 T-Mobile Ex Parte").

²² See May 17 T-Mobile Ex Parte at 2-3 n.3.

²³ October 31 T-Mobile Ex Parte at 2 (quoting H.R. Rep No. 82-1750, at 12 (1952)).

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